

**DATED 23 March 2009**

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**CONSORTIUM AGREEMENT**

**MODSAFE**

Seventh Framework Programme of the European Community  
for Research, Technological Development and Demonstration  
Activities under the funding scheme of “Collaborative Project”

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**CONSORTIUM AGREEMENT**

THIS CONSORTIUM AGREEMENT is based upon  
REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the EC Grant Agreement, adopted on 10 April 2007 hereinafter referred to as the EC Grant Agreement and Annex II adopted on 10 April 2007 hereinafter referred to as Annex II of the EC Grant Agreement and is effective from the effective date of the EC Grant Agreement (hereinafter referred to as "Effective Date"),

BETWEEN:

- (1) TÜV Rheinland InterTraffic GmbH (short name: TRIT)  
the Co-ordinator
- (2) TÜV Rheinland Consulting GmbH (short name: TRC)
- (3) Société Technique pour l'Energie Atomique (short name: AREVA)
- (4) Budapest University of Technology and Economics (short name: BME)
- (5) Bombardier (Signal) GmbH (short name: BTSERCS)
- (6) Institut National de Recherche sur les Transports et leur Sécurité (short name: INRETS)
- (7) Alstom Transport SA (short name: Alstom)
- (8) Régie Autonome des Transports Parisiens (short name: RATP)
- (9) Technische Universität Dresden (short name: TUD)
- (10) Union Internationale des Transports Public (short name: UITP)
- (11) Association of the European Railway Industry (short name: UNIFE)
- (12) Université de Valenciennes et du Hainaut-Cambrésis (short name: UVHC)
- (13) Thales Rail Signalling Solutions Inc. (short name: Thales RSS)
- (14) KITE Solutions s.n.c. (short name: KITE)
- (15) Dimetronic SA (short name: Dimetronic)
- (16) Rail&Bus Consultants GmbH (short name: R&B)
- (17) Ansaldo STS France (short name: Ansaldo)
- (18) Transports Metropolitans de Barcelona S.A. (short name: TMB)
- (19) TelSys GmbH (short name: TelSys)
- (20) London Underground Limited (short name: LU)
- (21) Metro de Madrid S.A. (short name: MM)
- (22) Université de Technologie Compiègne (short name: UTC)

hereinafter, jointly or individually, referred to as "Parties" or "Party"

relating to the Project entitled

**Modular Urban Transport Safety and Security Analysis**

in short

**MODSafe**

hereinafter referred to as “Project”

**WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a Proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of “Collaborative Project”.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the EC Grant Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

## SECTION 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein

**1.1.1 Affiliate** of a Party has the meaning as defined in the EC Grant Agreement.

Unless proven otherwise any of the organisations listed in Attachment 4 to this Agreement shall be deemed an Affiliate in the sense of this Consortium Agreement. Each Party shall have the right to request a revision of Attachment 4 in respect of its relevant Affiliates in the case of reorganization, provided that such revision is prima facie compliant with the criteria set forth in this definition. Any other modification of Attachment 4 shall require the approval of the Plenary Group.

Unless listed in Attachment 4 to this Agreement entities under the common control of a government shall not be Affiliates in terms of this definition.

Any legal entity shall cease to be an Affiliate where there has been a change in ownership or control of the Party subject to the Parties mutual agreement to the contrary, and subject also to the European Commission's confirmation in writing that, after duly having been provided with the details of the change in accordance with the corresponding provisions of Annex II to the EC Grant Agreement, the European Commission has decided not to terminate the EC Grant Agreement in accordance with Annex II to the EC Grant Agreement.

**1.1.2 AREVA** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

**1.1.3 ALSTOM** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

**1.1.4 Ansaldo** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

**1.1.5 BME** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

- 1.1.6 API** (Application Programming Interface) means an interface or other means provided for by a Software application, component or a library for the purpose of interfacing or interaction of other Software with such application, component or library.
- 1.1.7 BTSERCS** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.8 CONSORTIUM AGREEMENT** means this consortium agreement
- 1.1.9 CONSORTIUM BODY** has the meaning appearing in clause 3.1.2
- 1.1.10 Contributor** has the meaning given to it in Clause 5.2.3.
- 1.1.11 Council** means the Council of the European Communities.
- 1.1.12 Defaulting Party** shall have the meaning given to it by Clause 7.1.1.
- 1.1.13 DIMETRONIC** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.14 DOW** means Annex I - "Description of Work" to the EC Grant Agreement as amended from time to time.
- 1.1.15 EC Grant Agreement** means the EC Grant Agreement between the Co-ordinator, the Parties and the European Commission regarding the performance of the Project.
- 1.1.16 Euro** means the lawful currency of the member states of the European Communities that adopt or have adopted such currency as their lawful currency under the legislation of the European Union relating to European Economic and Monetary Union.
- 1.1.17 Executive Board** has the meaning given to it by Clause 3.4.
- 1.1.18 First Party** has the meaning given to it in Clause 5.5.1.
- 1.1.19 General Conditions** means Annex II - "General Conditions" to the EC Grant Agreement.
- 1.1.20 INRETS** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.21 KITE** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).



- 1.1.22 Limited Source Code Access** means access to the Source Code as available from the Party granting such access including access to the Software Documentation, provided in any case that an API including Software Documentation for the respective Software is not available, and also that use of the Software in Object Code form alone is not meaningful.
- 1.1.23 LU** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.24 Management Team** has the meaning given to it by Clause 3.5.
- 1.1.25 Mark** means any trade or business name, service mark, trade mark, logo or other symbol used to identify a Party or any of its activities.
- 1.1.26 Member State** means any state being a signatory to the Treaty on European Union as in force from time to time.
- 1.1.27 MM** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.28 Object Code** means Software in machine-readable, compiled and/or executable form (including, but not limited to, byte code form) and the Software Documentation necessary for the use of such Object Code.
- 1.1.29 Originator** has the meaning given to it in Clause 5.2.5.
- 1.1.30 Plan for Use and Dissemination** means the implementation strategy to be adopted in terms of Clause 5.3 .
- 1.1.31 Preferential Conditions** means non-discriminatory and reasonable conditions, which are when taken as a whole more favourable to a Party being granted Access Rights than would be the case in an equivalent arm's length transaction under normal market conditions.
- 1.1.32 Programme of Activities** means the implementation plan for the Project in terms of the DOW.
- 1.1.33 Project Share** means any Party's share in the European Commission's financial contribution to the Project as stipulated in the EC Grant Agreement.
- 1.1.34 Proposal** means the proposal made by the Parties to the European Commission in an aim to be awarded the EC Grant Agreement.
- 1.1.35 RATP** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

- 1.1.36 R&B** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.37 Retention Rate** means such portion of Tranche 1 or any Subsequent Tranche, as the case may be, which is retained by the European Commission until receipt and approval by the European Commission of certain deliverables for each relevant year.
- 1.1.38 Second Party** has the meaning given to it in Clause 5.5.1.
- 1.1.39 Software** means software program being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer or similar device or hardware in the form of applications, components and libraries, and fixed in any tangible medium of expression.
- 1.1.40 Software Documentation** means software information being technical information relating to the design, development, use or maintenance of any version of Software.
- 1.1.41 Source Code** means Software in human readable form normally used to make modifications to it (including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation) together with the Software Documentation necessary for use of such Source Code.
- 1.1.42 Plenary Group** shall have the meaning given to it by Clause 3.3.
- 1.1.43 Subsequent Tranche** means any payment made by the European Commission after disbursement of Tranche 1.
- 1.1.44 TelSys** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.45 Thales RSS** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.46 TMB** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.47 Tranche 1** shall mean the first payment to be made by the European Commission.
- 1.1.48 TRC** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).

- 1.1.49 TRIT** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.50 TUD** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.51 UITP** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.52 UNIFE** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.53 UVHC** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.54 UTC** has the meaning appearing in the second column (Beneficiary name) of Attachment 8 opposite such term in the third column (Beneficiary short name).
- 1.1.55 Work Package** shall have the meaning given to it by Clause 3.1.

## **1.2 Interpretation**

**1.2.1** Capitalised terms used but not defined herein will have the same meanings assigned to them in the EC Grant Agreement including its Annexes.

**1.2.2** In this Agreement, unless the contrary intention appears, a reference to:

- a. a Clause, a Subclause or a Attachment is a reference to a clause or subclause of, or an Attachment to, this Agreement;
- b. words importing the plural include the singular and vice versa; and

## SECTION 2 FOUNDATIONS

### 2.1 Objectives

The purpose of this Consortium Agreement is to specify the organisation of the work between the Parties, to organize the management of the Project, to define the rights and obligations of the Parties, including, but not limited to, their liability and indemnification, to supplement the provisions of the EC Grant Agreement concerning Access Rights and to set out rights and obligations of the Parties supplementing but not conflicting with those of the EC Grant Agreement.

### 2.2 Entry Into force, duration and termination

#### 2.2.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective start date of the MODSafe project identified at the Grant Agreement..

A new Party enters the Consortium upon signature of the Accession document [Attachment 3] by the new Party and the Co-ordinator. Such accession shall have effect from the date identified in the Accession document.

As per the European Commission contractual rules, the EC Grant Agreement will enter into force upon signature by the Co-ordinator and the European Commission.

The Co-ordinator shall therefore not sign the EC Grant Agreement unless and until all other Parties have approved in writing the Contract terms and such approval shall not be unreasonably withheld or delayed.

#### 2.2.2 DURATION

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the EC Grant Agreement and under this Consortium Agreement.

#### 2.2.3 TERMINATION

2.2.3.1 This Consortium Agreement may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the EC Grant Agreement.

2.2.3.2 This Agreement shall be terminated without any further notice and without any liability of one Party to another Party on the occurrence of each of the following events:

- a. Award by the European Commission of a contract for the Project to other parties;
- b. The EC Grant Agreement has not been awarded to the Parties within 18 months from the entry into force of this Agreement;
- c. Cancellation of the Project by the European Commission;
- d. Termination of the EC Grant Agreement in its entirety by the European Commission without default of one or several Parties;
- e. Indication of the European Commission in writing that the award of the Contract pursuant to the Proposal is conditional upon the exclusion of one or more Parties, unless the remaining Parties decide to further pursue the Project reaching agreement on how to bear the consequences of such exclusion, including the takeover of the Work Packages allocated to the excluded Party;
- f. If, following any Party entering into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, the other Parties decide, subject to approval by the European Commission, to terminate the Project.

## **2.3 Consequences**

**2.3.1** The case of Clauses 7.2 and 2.2.3 if the remaining Parties having agreed to take over the Work Package of an excluded Party all rights and obligations under the EC Grant Agreement and this Agreement shall in good faith be redistributed among the remaining Parties.

**2.3.2** Notwithstanding the provisions of Clause 2.2.3 no Party shall by reason of withdrawal or termination be relieved from:

- a. its responsibilities under this Agreement or the EC Grant Agreement in respect of that part of that Party's work which has been carried out or which should have been carried out, as the case may be, up to the date of withdrawal or termination; or
- b. any of its obligations or liabilities arising out of such withdrawal or termination.

**2.3.3** The provisions of the Clauses of this Agreement relating to liability, confidentiality, intellectual property rights and publications applicable law and Settlement of disputes, shall survive the term or termination of this Agreement for any reason whatsoever to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those Clauses.

**2.3.4** The avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

**2.3.5** Confidentiality clause:

a. During the term of the Project and for a period of three (3) years thereafter, the Parties shall treat as confidential any document, information, Knowledge, Pre-existing Know-How or other material which is designated as proprietary by the disclosing Party by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as confidential at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as confidential information by the disclosing Party. Accordingly, each Party undertakes (in addition and without prejudice to any commitment under the EC Grant Agreement) that:

1. the receiving Party shall not use any such information for any purpose other than in accordance with the terms of the EC Grant Agreement and this Consortium Agreement, and
2. the receiving Party shall not disclose any such confidential information to any third party except with the disclosing Party's prior written consent, and
3. such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication has not been specifically authorized in writing by the disclosing Party.
4. the receiving Party shall ensure that internal distribution of Confidential Information received from an other Party shall take place on a strict need-to-know basis;
5. the receiving Party shall return to the disclosing Party on demand all Confidential Information which has been supplied to the receiving Party including all copies thereof and to use all reasonable endeavours to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the receiving Party may however request to keep a copy for archival purposes only.

b. No obligation shall apply to any such information:

1. has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Party; or
2. is already known to the receiving Party, as evidenced by written documentation in the files of the receiving Party; or
3. has been lawfully received from a Party without restrictions or breach of this Consortium Agreement; or
4. has been or is published without violation of this Agreement; or

5. is independently developed in good faith by employees of the receiving Party who did not have access to the Confidential Information; or
  6. is not properly designated or confirmed as confidential.
- c. The Parties shall impose the same obligations on their employees, who obtain knowledge of confidential information, as far as legally possible even for the time after the end or after the termination of employment.
  - d. Each Party agrees that nothing shall prevent the communication of information
    1. as is needed to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the complying Party shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information;
    2. to any Affiliate or to any other third party (including the European Commission) insofar as needed for the proper carrying out of the EC Grant Agreement and/or this Consortium Agreement, provided that the disclosing party will use reasonable endeavours to procure due observance and performance by such third party of the undertakings referred to in this Article and all relevant undertakings in the EC Grant Agreement.

## **2.4 Responsibilities of Parties**

### **2.4.1 General principles**

#### **Each Party shall:**

- a. without prejudice to any other obligations under this Agreement, take all necessary measures to promptly and in due time perform and fulfil all their obligations as defined for every Party in the DOW such that the Project is carried out in accordance with the terms and conditions of the EC Grant Agreement and this Agreement;
- b. provide the Co-ordinator with the deliverables, information, and reports as the Co-ordinator requires in order to perform its duties under this Agreement and under the EC Grant Agreement or as the European Commission may request (and in such case the relevant Party shall keep the Co-ordinator informed of any such request from the European Commission);
- c. on request of the Co-ordinator, submit all deliverables, information, and reports preferably in electronic form in RTF or XLS format, graphics in GIF or JPEG format or any other appropriate format mutually agreed.



d. Although being a leader of WP4, 8 and 9 UITP will not be responsible for drafting the related deliverables, but will have the coordinating role in the respective WP4. For WP4, Telsys will prepare the draft deliverable, being the major contributor. For WP8, RATP due to the role that it plays in UITP security Commission and KITE with its experience in other domains than urban guided transport systems will prepare the draft deliverable, being the major contributors.

e. The LEAR of each beneficiary engages his organisation to maintain and update regularly the legal and financial data held by the Research DGs of the European Commission regarding his legal entity, thus enabling its use for contracting and other transactions between his legal entity and the Research DGs of the European Commission. The LEAR should regularly check the correctness of the available data in particular when he is aware of changes and of negotiations and other transactions ongoing and inform the Coordinator.

#### **Each Party undertakes:**

- a. to notify the Co-ordinator promptly of any delay in performance or of any event that may impact the Project;
- b. to inform the Co-ordinator of relevant communications it receives from third parties in relation to the Project;
- c. to use all reasonable endeavours to ensure the accuracy of any information or materials it supplies to the other Parties or under the EC Grant Agreement and to promptly correct any error therein of which it is notified, if reasonable. The recipient Party shall be responsible for the consideration of all restrictions and reservations the providing Party informed the other Parties in writing;
- d. not to use any proprietary rights of a third party for which such Party has not acquired the corresponding right of use and/or to grant licenses;
- e. to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Parties and in accordance with good business ethics;
- f. to participate in a co-operative manner to the meetings of the different bodies under this Consortium Agreement and not to exercise veto rights, which are absolute, inappropriately.

#### **2.4.2 Breach**

In the event the responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC Grant Agreement, the Co-ordinator will give written notice requiring that such breach be remedied within 30 calendar days.

If a substantial breach will not be remedied within 30 calendar days, the Plenary Group may decide to declare the Party to be a Defaulting Party and to decide on the consequences according to the provisions in clause 7.1.

### **2.4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the EC Grant Agreement. It has to ensure that the use of third parties does not affect the rights and obligations of the other Parties regarding Background and Foreground.

## SECTION 3 ORGANISATION OF THE PROJECT

### 3.1 General Principles

#### 3.1.1 General structure of work

- a) The Project is structured by work packages allocating the workload amongst the Parties involved as defined in the DOW.
- b) Major changes in work packages, particularly the creation, reallocation or termination of work packages, shall be dealt with and decided by the Executive Board.

#### 3.1.2 The organisational structure of the Consortium

The organisational structure of the Consortium shall comprise the following Consortium Bodies

- a) **Plenary Group** is the general assembly of the Consortium and will take the decisions on fundamental issues as specified in Article 3.3.
- b) **Executive Board** is the decision-making and executing body of the Project as specified in Article 3.4.

The Co-ordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Co-ordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC Grant Agreement and this Consortium Agreement.

#### 3.1.3 General operational procedures for all Consortium Bodies

##### 3.1.3.1 Representation in meetings

Any member of a Consortium Body:

- should be present or represented at any meeting of such Consortium Body;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

##### 3.1.3.2 Preparation and organisation of meetings

#### **Convening meetings:**

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

**Ordinary meeting**

Plenary Group: Twice a year

Executive Board: Two to three times a year.

**Extraordinary meeting**

Plenary Group: At any time upon written request of the Executive Board or 1/3 of the members of the Plenary Group

Executive Board: At any time upon written request of any member of the Executive Board

**Notice of a meeting:**

The chairperson of a Consortium Body shall give notice in writing of a meeting to each member of that Consortium Body as soon as possible and within the minimum number of days preceding the meeting.

**Ordinary meeting**

Plenary Group: 45 calendar days

Executive Board: 30 calendar days

**Extraordinary meeting**

Plenary Group: 15 calendar days

Executive Board: 7 calendar days

**Sending the agenda:**

The chairperson of a Consortium Body shall prepare and send each member of that Consortium Body a written (original) agenda within the minimum number of days preceding the meeting.

Plenary Group: 21 calendar days

Executive Board: 7 calendar days

**Adding agenda items:**

Any agenda item requiring a decision by the members of a Consortium Body must be identified as such on the agenda.

Any member of a Consortium Body may add an item to the original agenda by written notification to all of the other members of that Consortium Body within the minimum number of days preceding the meeting.

Plenary Group: 14 calendar days

Executive Board: 2 calendar days

During a meeting the members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

Any decision may also be taken without a meeting by circulating to all members of the Consortium Body a written document which is then signed by the defined majority (see Articles 3.3.13 and 3.4.13) of all members of the Consortium Body.

Meetings of each Consortium Body can also be held by teleconference or other telecommunication means.

Decisions may only be executed once the relevant part of the Minutes is accepted according to Articles 3.3.8 and 3.4.8.

## **3.2 Co-ordinator**

**3.2.1** TRIT shall be appointed Co-ordinator of the Project.

**3.2.2** The Co-ordinator shall act as intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC Grant Agreement and in this Agreement.

**3.2.3** In particular the Co-ordinator shall be responsible for:

- a) the submission of reports and other deliverables to the European Commission;
- b) the administration, preparation of minutes and provision of the chairman of the Plenary Group and the Executive Board including the follow-up of their decisions;
- c) the transmission of any documents and information connected with the Project to and between the Parties concerned;
- d) the withholding of advance payments and the transfer of sums allocated among the Parties as per the budget agreed in the Plenary Group and the keeping of related records identifying what portion of the payments made by the European Commission has been allocated and/or paid to each Party

The Co-ordinator shall neither be entitled to act or to make legally binding declarations on behalf of any other Party nor to enlarge its role beyond the one described herein and in the EC Grant Agreement.

If the Co-ordinator fails in its coordination tasks, the Plenary Group may propose to the European Commission to change the Co-ordinator.

### **3.3 Plenary Group**

- 3.3.1** The Plenary Group shall consist of one representative of each beneficiary listed in Attachment 8, column 2.
- 3.3.2** The Co-ordinator shall chair all meetings of the Plenary Group. Each representative may appoint a substitute to attend and vote at any meeting of the Plenary Group.
- 3.3.3** The Co-ordinator shall convene meetings of the Plenary Group twice a year. A meeting of the Plenary Group shall also be convened upon written request of 1/3 of the members of the Plenary Group in case of an emergency or upon request of the Executive Board.
- 3.3.4** The Co-ordinator shall give each member of the Plenary Group at least forty-five calendar days notice in writing of regular meetings, and at least fifteen calendar day's notice in case of an emergency.
- 3.3.5** Any decision requiring a vote at the Plenary Group must be clearly identified as such on the agenda supplied for the meeting.
- 3.3.6** Any Party may suggest additions to the proposed topics for discussion or decision on the agenda. Any request for such an addition must be addressed in writing to the Co-ordinator in its capacity as chairman of the Plenary Group with a copy to all other Parties at least 14 calendar days prior to the meeting date. In case of urgency an addition may be accepted at any time and without further formal requirements by unanimous decision of all members of the Plenary Group.
- 3.3.7** Each Plenary Group Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 3.3.10 and 3.3.11 of this Consortium Agreement.
- 3.3.8** The Co-ordinator shall draft the minutes of each Plenary Group meeting to formalise in writing all decisions taken and shall dispatch them within fifteen calendar days of the concerned meeting to all members of the Plenary Group for approval.
- 3.3.9** The minutes shall be deemed approved by the members of the Plenary Group if, within fifteen calendar days from receipt thereof, no member of the Plenary Group has objected to the Co-ordinator in writing, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all members of the Plenary Group.
- 3.3.10** A copy of the minutes shall be provided to each of the Parties once such minutes have been approved by the members of the Plenary Group.

**3.3.11** The Plenary Group shall be in charge of the fundamental structure and composition of the project. The Executive Board will be the major decision-making body whereas the Plenary Group will be in charge of decision-making of the following issues:

- a. Changes in the budget allocation that require an amendment of the EC Grant Agreement and
- b. Changes in the composition of the consortium.

The Parties shall be bound by all decisions of the Plenary Group.

**3.3.12** The Plenary Group shall in particular be responsible for:

- a. making proposals to the Parties for the review and/or amendment of terms of the EC Grant Agreement including its Annexes and/or this Agreement;
- b. the management of the Consortium's budget for the Project and decisions on the allocation of the European Commission's financial contribution between the work packages and between the Parties, including an annual validation of the realised expenditure in accordance to the budget;
- c. decisions on the accession of new Parties to the EC Grant Agreement and this Agreement whereby the approval of this accession shall not be unreasonably withheld.
- d. decisions on the exclusion of a Defaulting Party and the assignment of the Defaulting Party's tasks to other Parties, or, where appropriate, assignment to a new entity acceding to the EC Grant Agreement and this Agreement in accordance with the terms of this Agreement;
- e. the decisions referred to in Clause 1.1.1;

**3.3.13** The Plenary Group shall not deliberate and decide validly unless three quarters (3/4) of its members are present or represented.

**3.3.14** Decisions of the Plenary Group shall be taken with a majority of three quarters (3/4) of the Voting Group. Each member has one vote. The Co-ordinator shall have a casting vote. The casting vote shall only be performed after second consultation of the Voting Group, whether no majority has been reached after first convening.

**3.3.15** In the case of Clause 3.3.11 (d) above the Defaulting Party shall have no right to vote.

## **3.4 Executive Board**

**3.4.1 Executive Board** is the decision-making and executing body of the Project which shall report to the Plenary Group

The Executive Board shall consist of the Co-ordinator and Secretariat as well as the work package leaders and UNIFE. The members are:

TRIT	leading WP6
INRETS	leading WP 1
TUD	leading WP2, WP5
BME	leading WP7
BTSERCS	leading WP3
UITP	leading WP4, WP8, WP9, WP12
RATP	leading WP10
TRC	leading WP11
UNIFE	Participant in WP10 and WP12

- 3.4.2** The Co-ordinator shall chair all meetings of the Executive Board. Each representative may appoint a substitute to attend and vote at any meeting of the Executive Board.
- 3.4.3** The Co-ordinator shall convene meetings of the Executive Board two to three times a year. A meeting of the Executive Board shall also be convened upon written request of any member of the Executive Board in case of an emergency.
- 3.4.4** The Co-ordinator shall give each member of the Executive Board at least thirty calendar days notice in writing of regular meetings, and at least seven calendar day's notice in case of an emergency.
- 3.4.5** Any decision requiring a vote at the Executive Board must be clearly identified as such on the agenda supplied for the meeting.
- 3.4.6** Any member of the Executive Board may suggest additions to the proposed topics for discussion or decision on the agenda. Any request for such an addition must be addressed in writing to the Co-ordinator in its capacity as chairman of the Executive Board with a copy to all other members of the Executive Board at least two calendar days prior to the meeting date. In case of urgency an addition may be accepted at any time and without further formal requirements by unanimous decision of all members of the Executive Board.
- 3.4.7** The Co-ordinator shall draft the minutes of each meeting to formalise in writing all decisions taken and shall dispatch them within fifteen calendar days of the concerned meeting to all members of the Executive Board for approval.
- 3.4.8** The minutes shall be deemed approved by the members of the Executive Board if, within fifteen calendar days from receipt thereof, no member with voting power of the Executive Board has objected to the



Co-ordinator in writing, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all members of the Executive Board.

**3.4.9** A copy of the minutes shall be provided to each of the Parties once such minutes have been approved by the members of the Executive Board.

**3.4.10** The Executive Board shall be in charge of the general monitoring of the Project, and the preparation and execution of the Programme of Activities.

**3.4.11** The Executive Board shall in particular be responsible for:

- a. any decisions on a Programme of Activities and a Plan for Use and Dissemination of Knowledge including decisions on major alterations or amendments to these documents;
- b. the submission to the Plenary Group of the Plan for Use and Dissemination for approval on the terms and conditions of the Access Rights to Knowledge or Pre-Existing Know-How set forth in this Agreement
- c. any decisions on amendments or alterations to specific end-user requirements;
- d. making proposals to the Parties for the review and/or amendment of terms of the EC Grant Agreement including its Annexes and/or this Agreement;
- e. the decisions referred to in Clause 3.1.1 (b);
- f. the resolution of potential conflicts arising amongst the Parties by promotion of widespread consensus and compromise positions;
- g. the preparation of the Programme of Activities through the preparation of annual implementation plans as required in the EC Grant Agreement;
- h. the consolidation of the official progress reports to be submitted to the European Commission;
- i. determining the deliverables for the Project;
- j. making proposals to the Plenary Group relating to the budget;
- k. making decisions relating to changes to the Project if necessary in close co-operation with the leader of the concerned work package;
- l. making proposals to the Plenary Group relating to the exclusion of a Defaulting Party and the implementation of a competitive selection procedure for a replacement Party;

m. the supervision of ethical aspects, on a larger scale as well as the gender equal opportunity and ethical issues.

**3.4.12** The Executive Board shall not deliberate and decide validly unless three quarters (3/4) of all votes are present or represented.

**3.4.13** With the exceptions mentioned below each of the work package leaders shall have one vote per work package it leads. In addition, UNIFE will have one vote. The Co-ordinator shall have no vote other than in his capacity as work package leader. TRC shall have no vote. Decisions of the Executive Board shall be taken with a majority of three quarters (3/4) of the votes of the Executive Board present or represented.

### **3.5 Management Team**

**3.5.1** The Management Team shall consist of one representative each of TRIT and TRC.

**3.5.2** TRIT shall chair the Management Team. Each representative may appoint a substitute as member of the Management Team.

**3.5.3** The Management team shall be in charge of providing assistance to the Executive Board as specified by the Executive Board, with regard to the day-to-day tasks of the Executive Board.

**3.5.4** The Management Team shall in particular be responsible for:

- a. close follow-up, execution and monitoring of the daily tasks of the Executive Board;
- b. the administrative and financial management of the Project;
- c. the general technical and quality management, the knowledge management, the exploitation management and the stakeholder management of the Project which will be checked by the project coordinator;
- d. the provision of assistance to the Executive Board in implementing common communication and reporting procedures to be used by the Consortium and within the various Work packages;
- e. suggest selection procedures for new Parties.

### **3.6 Management Support**

**3.6.1** TRC has in addition to being Party to this Agreement been appointed to support the Co-ordinator in carrying out the management tasks of the Project – pre-dominantly related to administrative, legal and dissemination issues - as defined in the Annex I of the EC Grant Agreement (DOW).

- 3.6.2** For the purposes of fulfilling these management tasks the other Parties agree to make all reasonable endeavours to provide TRC with all the necessary information in due time.
- 3.6.3** As a Party and in accordance with the financial rules of the European Commission, TRC will declare actual costs.
- 3.6.4** TRC will have no rights to results of the Project and disclaims all rights to exploitation of such results.
- 3.6.5** TRC will provide access rights to the protected area of the MODSafe project webpage that will be implemented for purposes of management of the Project.

## SECTION 4 FINANCIAL PROVISIONS

### 4.1 General Principles

#### 4.1.1 Distribution of the Financial Contribution

The financial contribution of the European Commission to the Project shall be distributed by the Co-ordinator according to:

- the Consortium Budget as included in the Consortium Plan
- the approval of reports by the European Commission, and
- the provisions of payment in Article 4.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

#### 4.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Co-ordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

#### 4.1.3 Funding Principles

A Party which spends less than its allocated share of the Consortium Budget will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the Consortium Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

#### 4.1.4 Financial Consequences for a leaving Party

A Party leaving the Consortium shall refund all advances paid to it except the amount of expended eligible costs accepted by the European Commission.

Furthermore a Defaulting Party shall, within the limits specified in Article 7.1.2 (c) of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

### 4.2 Budgeting

All resources made available for the Project shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties and shall be budgeted.

### 4.3 Payments

Payments to Parties are the exclusive tasks of the Co-ordinator.

In particular, the Co-ordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community contribution to the Project separated from its normal business accounts, its own assets and property, except if the Co-ordinator is a Public Body or is not entitled to do so due to statutory legislation.

All payments shall be made without undue delay by the Co-ordinator after receipt of funds from the European Commission in accordance with the accepted decisions of the Plenary Group on the Consortium Budget, which includes the payment Attachment.

- Payments to Parties will be handled according to the provisions in Attachment 9 “Payment provisions”.

The Co-ordinator is entitled to withhold any advances either due to a Defaulting Party in accordance/compliance with the accepted decisions of the European Commission and the Consortium.

In the same conditions, the Co-ordinator is entitled to recover any advances already paid to a Defaulting Party.

## SECTION 5 INTELLECTUAL PROPERTY RIGHTS

### 5.1 General Principles

Each Party is bound by the terms and conditions of Part C of the General Conditions entitled "Intellectual Property Rights" as hereby complemented.

### 5.2 Ownership and protection of Knowledge

- 5.2.1 Knowledge shall be the property of the Party generating it.
- 5.2.2 The joint ownership of knowledge should be avoided where possible. Only where it is not possible to distinguish the contribution of two or more participants or the result cannot be separated into distinctive parts, joint ownership will be necessary. (see also EC Grant Agreement, Annex II, Art. II.28. Protection).
- 5.2.3 If, in the course of carrying out work on the Project, a joint invention, design or work is made (and at least two Parties are contributors), and if the features of such joint invention design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right, the Parties concerned ("**Contributors**") agree that they may jointly apply to obtain and/or maintain the relevant rights and shall strive to set up amongst themselves appropriate agreements in order to do so.
- 5.2.4 Subject to any other agreement between the Contributors, the Contributors shall, so long as any such right is in force, be entitled to use and to license such right without any financial compensation to or the consent of the other Contributors. In case of licensing to third parties, agreed appropriate financial compensation shall be given to the other Parties concerned.
- 5.2.5 In the case where a Party ("**Originator**") would decide in its sole discretion that it does not intend to seek adequate and effective protection of certain of its Knowledge from the Project or if the Party intends to waive such protection, then, the Originator shall inform in writing the other Parties, and any Party interested in applying to obtain and maintain such protection shall advise the other Parties in writing within one month of receipt of relevant notice.

**5.2.6** In case several Parties are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements in order to do so. The Originator shall assign to those Parties all necessary rights, which it owns. Should no other Party show an interest to so apply, the Originator shall inform the European Commission in accordance with the Part C of the General Conditions with a copy to the Co-ordinator.

**5.2.7** The foregoing shall be without prejudice to the Access Rights of all Parties set forth in Clause 5.4 that will remain unaffected.

### **5.2.8 Transfer of Foreground**

Each Party may transfer ownership of its own Foreground following the procedures of the EC Grant Agreement Article II 27.

It may identify in Attachment 6 to this Consortium Agreement specific third parties it intends to transfer Foreground. The other Parties hereby waive their right to object to a transfer to listed third parties according to the EC Grant Agreement Article II.27.3.

The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

Any addition to Attachment 6 after signature of this Agreement requires a decision of the Plenary Group.

## **5.3 Publication and Dissemination of knowledge**

**5.3.1** A Party may publish Knowledge generated by another Party or any Pre-Existing Know-How of such other Party, even if such Knowledge or Pre-Existing Know-How is amalgamated with such Party's Knowledge, only with the other Party's prior written approval.

**5.3.2** For the avoidance of doubt, for the period of secrecy needed for a successful patent application, there cannot be any publication during such period without prior written approval of the Party owning the Knowledge.

**5.3.3** A Party shall provide the other Parties and the European Commission with a 30-day prior notice of any planned publication on its Knowledge and, if requested, with copy of relevant publication data. Adequate publication references shall be given in the publication.

**5.3.4** Unless it has granted prior written publication approval, any Party may object to the publication within fifteen calendar days from receipt of the data, if it considers and can reasonably show that the protection of its own Knowledge could thereby be adversely affected. Beyond this period, this consent shall be deemed to have been given.

- 5.3.5** Objection shall be made both to the issuing Party, with a copy to the Co-ordinator, and to the European Commission.
- 5.3.6** If dissemination of Knowledge does not adversely affect its protection or use and subject to legitimate interests, the Parties shall ensure further dissemination of their own Knowledge as provided under the EC Grant Agreement and this Agreement within a period of two years after the termination of the EC Grant Agreement.
- 5.3.7** The Parties agree to cooperate to allow for the timely submission, examination, publication and defence of any dissertation or thesis for a degree, which includes their Knowledge and Pre-Existing Know-How, if there will be no adverse effect to a successful patent application and no legitimate interest of the concerned Party. In this case a prior written approval of the concerned Party is needed.



## **5.4 Access Rights**

### **5.4.1 Background covered**

In accordance with and subject to the provisions of the EC Grant Agreement, any Party may enter in Attachment 2 any specific Background excluded from the obligation to grant Access Rights in accordance with the provisions of this Consortium Agreement. All other Background except that listed in Attachment 2 shall be available for the granting of Access Rights in accordance with the provisions of this Consortium Agreement.

### **5.4.2 General Principles**

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not infringe third party property rights.

As provided in the EC Grant Agreement Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

If the Plenary Group considers that the restrictions have such impact, which is not foreseen in the Consortium Plan, it may decide to update the Consortium Plan accordingly.

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise. Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the EC Grant Agreement Article II.32.7.

Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.

All Access Rights for the use outside the Project shall be granted upon written request.

The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place. The requesting Party must show that the Access Rights are needed.

### **5.4.3 Access Rights for implementation**

Access Rights to Foreground and Background needed for the execution of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed in Attachment 2.

#### 5.4.4 Access Rights for Use

Access Rights to Foreground if needed for Use of a Party's own Foreground shall be granted on a royalty-free basis. Access Rights to Background if needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

Access rights for internal research activities shall be granted on a royalty-free basis.

#### 5.4.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the EC Grant Agreement Article II.34.3.

In addition, Affiliate Entities shall also enjoy Access Rights if they can show that:

- they hold a license on Foreground developed by a Party they are affiliated to; and
- they need Access Rights in order to use such Foreground; and
- they are established in a Member State or an Associated Country;
- and they are listed in Attachment 4 (Listed Affiliated Entities) to this Consortium Agreement.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the EC Grant Agreement or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse. A possible bilateral agreement between one or several Parties to this Agreement and the respective Affiliated Entity shall not be affected by this.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

#### **5.4.6 Additional Access Rights**

The Parties agree to negotiate in good faith any additional Access Rights to Foreground as might be asked for by any Party, upon adequate financial conditions to be agreed.

#### **5.4.7 Access Rights for Parties entering or leaving the Consortium**

##### 5.4.7.1 New Parties entering the Consortium

All Foreground developed before the accession of the new Party shall be considered to be Background with regard to said new Party.

##### 5.4.7.2 Access Rights granted to a leaving Party

###### 5.4.7.2.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Plenary Group to terminate its participation in the Consortium.

###### 5.4.7.2.2 Non-defaulting Party

A Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation. The time limit for its right to request these Access Rights shall start on the same date.

##### 5.4.7.3 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the EC Grant Agreement and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

#### **5.4.8 Specific Provisions for Access Rights to Software**

For the avoidance of doubt, the general provisions for Access Rights provided for in Art. 5.4 are applicable also to Software.

Parties' Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

- The Parties agree that Access Rights granted under Clause 5.4 when applying to Software do not comprise access to Source Code but only to Object Code, unless otherwise expressly provided herein below.
- For Software, which is either Pre-Existing Know-How or Knowledge, the Parties also agree that they shall have Limited Source Code Access for

carrying out their work under the Project but they shall not have any access to Source Code for Use.

- Each Party licensing its Software shall have the right to ask for a prior written agreement with the Party to be licensed specifying and protecting its proprietary rights.
- Access Rights to Object Code and/or an API for Use shall comprise, at least, the worldwide right to:
  - a. use in research, to create/market a product/process, and to create/provide a service;
  - b. to make and have made an unlimited number of copies of such Object Code and/or API;
  - c. distributed, make available, market, sell and offer for sale; even by using services of a third party, such Object Code and/or API alone or in connection with products or services of the Party having the Access Rights; and
  - d. grant in the normal course of the relevant trade to end-user customers buying/using the product/services a perpetual, irrevocable, worldwide licence to use such Object Code and/or API alone or in connection with or integrated into, products and services of the Party having the Access Rights and, as needed, to maintain such product/service, and to create for its own end-use interacting interoperable Software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).
- Where a Party has Source Code Access to Knowledge for Use, Access Rights to such Source Code shall comprise, at least, a worldwide right to use, to make and have made copies, to modify and have modified, develop and have developed, to adapt and have adapted Source Code for research, to create /market a product/process, to create/provide a service and/ to sub-license such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.
- Each sublicense granted according to the provisions of this Art. 5.4.8 shall always be made by a traceable agreement specifying and protecting the proprietary rights of the Party concerned.

## 5.5 Minor amount of Knowledge amalgamated

- 5.5.1 Any Party ("**First Party**") may enter into a technical cooperation or licensing arrangement with a third party in respect of any minor amount of Knowledge of another Party ("**Second Party**") which have been

unavoidably incorporated into or amalgamated with the First Party's own Knowledge.

- 5.5.2** In such circumstances and upon request of the First Party, the Second Party shall grant to the First Party non-exclusive licenses to its Knowledge against terms and conditions to be agreed, provided that no Legitimate Interests of the Second Party opposes the grant of such license.

**5.6 “Have manufactured” rights**

Access Rights granted under this Agreement shall include have-manufactured rights without restriction.

**5.7 Use of Marks**

- 5.7.1** Each Party retains all rights, title and interest in any of its Marks and no Party shall acquire under this Agreement any general license or any other right, express or implied, by law or otherwise, title or interest in or to any such Marks of any other Party.
- 5.7.2** Each Party shall obtain the other Party's prior written approval of any publication or any press release or public announcement making reference to said other Party and specifically on the Marks of said Party to be used and on the manner it will be used.

## SECTION 6 LIABILITIES OF THE PARTIES

### 6.1 Extent of warranty

With respect to information or materials supplied by one Party to another hereunder for the execution of the Project the supplying Party shall be liable for the accuracy and usability of these information or materials to fulfil the EC Grant Agreement. The recipient Party shall be entirely responsible for any use whatsoever of such information and materials. Furthermore the recipient Party shall be responsible to observe any restrictions or reservations, which the supplying Party have notified the Parties to this Consortium Agreement of, in writing.

### 6.2 Claims between the Parties Only

Each Party shall indemnify each of the other Parties in respect of the acts or omissions of itself and of its employees, agents and subcontractors provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as but not limited to loss of profit, revenue, contract or the like, and provided that the total limit of liability for direct financial loss of that Party to all of the other Parties collectively in respect of any and all such claims shall not exceed that Party's Project Share. The liability for personal injury or property damage is not limited. The exclusions of liability stated above shall not apply in the case of damage caused by a wilful act or gross negligence.

To avoid any misinterpretation, a claim of a Party as a result of a claim of the European Commission or a third party which is attributable to another Party to this Consortium Agreement is not a claim for indirect or consequential loss or damages of the first mentioned Party and will be handled as stated in Art. 6.3 and 6.4.

### 6.3 Liabilities towards the European Commission

**6.3.1** Notwithstanding any joint and several liabilities of the Parties which may exist towards the European Commission, each Party shall be liable towards the other Parties for any losses or damages suffered by the European Commission, as a consequence of any failure to perform the whole or part of its obligations under the EC Grant Agreement or under this Agreement.

**6.3.2** Accordingly, should the European Commission, in accordance with the provisions of the EC Grant Agreement, claim any reimbursement, indemnity or payment of damages from one or more Parties, which claims shall be solely for the account of the relevant Party or where the claim from the European Commission is issued only against a part of the Party, the Parties agree that:

- a. each Party which default has caused or contributed to cause such claim shall indemnify each of the other Parties against such claim
- b. insofar as several Parties are to be held responsible for the damage, the compensation payable shall be proportional to the extent to which they caused the damage. If it cannot be established which of the Parties is to be held responsible, the compensation payable shall be proportional to their shares of contribution related to the smallest unit of work (e.g. work package or Project) to which the damage can be attributed. This also applies if none of the Parties is responsible for a damage; in this case the compensation shall be proportional to the shares of the Parties of the total contribution. In case of disagreement the Plenary Group will decide the proportion of compensation payable.

#### **6.4 Liabilities towards third parties**

Subject always to such other undertakings and warranties as are provided for in this Agreement and the EC Grant Agreement, each Party shall be solely liable for any loss, damage or injury to third parties resulting solely from the performance of its part of the work.

#### **6.5 Liabilities for Subcontractor**

**6.5.1** Each Party shall remain fully responsible for the performance of any part of its work, or for the performance of its obligations under the EC Grant Agreement by any Subcontractor, provided that in any case appointment of a Subcontractor shall be with the approval of the Executive Board.

**6.5.2** Therefore said Party shall ensure:

- a. that such subcontracts fully comply with the requirements of the EC Grant Agreement;
- b. that the other Parties' Access Rights are fully preserved; and
- c. that the third party shall have no access to any other Party's Knowledge or Pre-Existing Know-How without the latter's prior written consent.

## SECTION 7 RETIREMENT OF PARTIES

### 7.1 Defaults and Remedies

**7.1.1** In the event of a substantial breach by a Party (“**Defaulting Party**”) of its obligations under this Agreement or under the EC Grant Agreement, which is not capable of remedy or which is not remedied within thirty calendar days from a written notice from European Commission or the Co-ordinator given in accordance with the decision of either the Plenary Group or the Executive Board, requiring that such breach be remedied, then the other Parties in the Plenary Group may jointly decide to terminate this Agreement with respect to the Defaulting Party after having given notice to the Co-ordinator of such termination not less than thirty calendar days prior to such termination.

**7.1.2** Termination of this Agreement shall take place with respect to the Defaulting Party only and the latter shall be deemed to have agreed to the termination of the EC Grant Agreement in respect of its participation therein under the relevant provisions of the General Conditions, provided always that:

- a. any and all Access Rights granted **to** the Defaulting Party and its Affiliates by the other Parties under this Agreement as well as under the EC Grant Agreement, shall cease immediately; but any and all Access Rights granted **by** the Defaulting Party to the other Parties and their Affiliates under this Consortium Agreement as well as under the EC Grant Agreement shall remain in full force and effect;
- b. the work of the Defaulting Party, shall be assigned to one or more companies and/or entities acceptable to the European Commission and chosen by the other Parties, agreeing to be bound by the terms of this Agreement. The preference shall be given to assignment of the work to one or more of the remaining Parties;
- c. The Defaulting Party shall:
  1. assume reasonable direct cost increase (if any) resulting from the assignment referred to in Subclause b above in comparison with the costs of the Work Package of the Defaulting Party as specified in the EC Grant Agreement provided that such increase shall not exceed 30 % of the work cost; and



2. be liable for any so resulting additional direct cost caused to the other Parties.

## **7.2 Exclusion/Withdrawal**

**7.2.1** The provisions of Clause 7.1.2 shall apply mutatis mutandis:

- a. without prejudice to any other rights of the other Parties in the event of any Party's participation in the EC Grant Agreement being terminated by the European Commission pursuant to the provisions of the General Conditions;
- b. if any Party enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors and the other Parties, subject to approval by the European Commission, decide to terminate this Agreement with respect to that Party, to take over the fulfilment of such Party's obligations and to receive subsequent payments under the EC Grant Agreement in respect thereof.

**7.2.2** A Party may only withdraw from the Project or otherwise request the termination of its participation in the EC Grant Agreement after having obtained:

- a. the prior written consent of the Plenary Group (such consent not to be unreasonably withheld); and
- b. the consent of the European Commission.

## SECTION 8 MISCELLANEOUS PROVISIONS

### 8.1 Force Majeure

The Parties agree that the definition of force majeure and obligations pertaining thereto shall be as per Article II.40. of the FP7 EC Grant Agreement - Annex II - General Conditions.

If execution of this agreement is prevented or restricted by Force majeure, as defined in Article II.40. of the FP7 EC Grant Agreement - Annex II - General Conditions, the Party so affected shall be released for the duration of the Force majeure, or such other period agreed between the Parties and the European Commission as being reasonable under the circumstances, from his obligations directly affected by the Force majeure provided that the Party concerned shall:

- a. give prompt notice to the Co-ordinator and the other Parties,
- b. use all reasonable endeavours to avoid or remove such causes of non performance, mitigate the effects of such causes and resume performance as soon as such causes are removed.

A Party has no responsibility or liability for any loss or expense suffered or incurred by the other Party(s) as a result of its not complying with its obligations for so long as the Force majeure under this article continues.

The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force majeure event is not overcome within six months after such notification, the transfer of tasks shall be carried out.

### 8.2 No Partnership or Agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### 8.3 Assignments

Any rights or obligations of the Parties arising from this Agreement may not be assigned or transferred in all or in part to any third party without the other Parties' prior written approval, and such consent shall not be unreasonably withheld if to an Affiliate of the assigning Party.

### 8.4 Notices and Communication

- 8.4.1 Any notice to be given under this Agreement shall require documents duly signed and shall be personally delivered or delivered by mail.

**8.4.2** They shall be addressed to the address and to the attention of the recipients set forth in the first column of Attachment 5 below the name of each Party or to such other address and recipient as the Party may notify in writing to the other Parties by not less than five business days' notice.

**8.4.3** Any communication or document made or delivered by one person to another under or in connection with this agreement will only be effective:

- a. if by way of fax, when received in legible form; or
- b. if by way of e-mail, when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message.

**8.4.4 Formal notices:**

If it is required in this Consortium Agreement that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

**8.4.5 Other communication:**

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt (e.g. Minutes).

**8.5 Entirety**

**8.5.1** This document, including Attachments 1-9 and the EC Grant Agreement (including its Annexes) contains the entire Agreement between the Parties and supersedes all previous negotiations, commitments and documents concerning the Project which relate to the Project or its proposal to the European Commission.

**8.5.2** Any changes or amendments to this Agreement have to be made in writing, refer clearly to this Agreement, and must be duly signed by all Parties. This also applies to this form requirement itself.

**8.6 Conflicts and Inconsistencies**

**8.6.1** The Attachments to this Agreement shall form an integral part hereof. In the event, however, of any conflict or inconsistency between any provision contained in the body of this Agreement and any provision contained in its Attachments, the provisions contained in the Agreement shall prevail.

**8.6.2** In the event of any conflict or inconsistency of any provision contained in this Agreement and the provisions of the EC Grant Agreement, the provisions of the EC Grant Agreement shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

## **8.7 Severality and Invalidity**

**8.7.1** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**8.7.2** In the place of an invalid provision, a valid provision is presumed to be agreed upon by the Parties, which comes closest commercially to the one actually agreed upon; the same shall apply in the case of an omission.

## **8.8 Restrictions**

The activities contemplated by this Agreement are subject to any mandatory rules or regulations that may be applicable in the countries in which the Parties' activities occur. Nothing in this Agreement shall be deemed to be an agreement to violate such rules or regulations. To the extent any such rules or regulations forbid or restrict any of the activities contemplated hereunder, the Parties agree, subject to Clause 8.7, that this Agreement shall not obligate either Party to conduct such activity.

## **8.9 Language**

This Agreement is drawn up in English which language shall govern all documents, notices and meetings for its performance and application and/or extension or in any other way relative thereto.

## **8.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Belgium.

## **8.11 Dispute Resolution**

**8.11.1** The Parties agree to use reasonable endeavours to try to amicably settle any dispute arising among them in relation to the implementation of the EC Grant Agreement and/or of this Agreement and for such purpose, to bring the dispute to the attention of the appropriate body at the appropriate level. In case of one Party sees a need to claim injunctive relief of actions or usage from any other Party of this Consortium Agreement all other Parties have to be informed thereof.

- 8.11.2** Failing to reach amicable settlement, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity this Agreement, will be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce as in force from time to time. The appointment of the arbitrators will be final and binding. By agreeing to arbitration pursuant to this Clause 8.11.2 the Parties waive irrevocably their right to any form of appeal, review, or recourse to any state court or other judicial authority, insofar as such waiver may validly be made. The Parties agree that they will give conclusive effect to the arbitrators' appointment and award and that judgment thereon may be entered and enforced by any court having jurisdiction.
- 8.11.3** There will be three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. Without prejudice to the foregoing, the claimant (or, where there are multiple claimants, the multiple claimants jointly) will appoint an arbitrator and the respondent (or, where there are multiple respondents, the multiple respondents jointly) will appoint an arbitrator and the International Chamber of Commerce will appoint the remaining arbitrator. In the absence of such a joint nomination and where all parties to the arbitration are unable to agree to a method for constitution of the arbitral tribunal, the International Chamber of Commerce may appoint each member of the arbitral tribunal and shall designate one of them to act as the presiding arbitrator.
- 8.11.4** The place of arbitration will be Brussels, Belgium or any other place the involved Parties agree upon and the English language will be used throughout the arbitral proceedings.
- 8.11.5** Where arbitral proceedings have already commenced under this Clause 8.11 the arbitral tribunal will have authority to consider and include in any proceeding, decision or award any further dispute. Subject to the foregoing, no other parties or other disputes will be included in, or consolidated with, the arbitral proceedings.
- 8.11.6** If the dispute between the Parties hereto has arisen in connection with a dispute between one or several of the Parties hereto and the EC or a third party, the decision made in the dispute between the Party/Parties hereto and the EC or the third party shall be binding also with regard to the associated dispute between the Parties hereto. None of the Parties is entitled to appeal to a arbitration for settlement.
- 8.11.7** Whilst any matters are in dispute, the Parties shall proceed with the execution of their work and shall comply with all the provisions of this Agreement; especially none of the Parties is entitled to stop the work during the time of a dispute.

## Section 9: Signatures

### AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

#### **TÜV Rheinland InterTraffic GmbH**

Signature(s)

Name(s) Dr. Herbert Jansen

Title(s) Managing Director

#### **TÜV Rheinland Consulting GmbH**

Signature(s)

Name(s) Prof. Dr. Hermann J. Thomann

Title(s) Managing Director

Name(s) Dr. Holger Sass

Title(s) Head of Department

#### **Société Technique pour l'Energie Atomique**

Signature(s)

Name(s) Dominique Mockly

Title(s) Chairman and Chief Executive Officer

#### **Budapesti Műszaki és Gazdaságtudományi Egyetem**

Signature(s)

Name(s) Gábor Péceli

Title(s) Rector

#### **Bombardier Transportation (Signal) Germany GmbH**

Signature(s)

Name(s) Volker Kregelin

Title(s) Head of Region Central Europe

#### **Institut National de Recherche sur les Transports et leur Sécurité**

Signature(s)

Name(s) Guy Bourgeois

Title(s) ?

#### **Alstom Transport S. A.**

Signature(s)

Name(s) Michel Serra

Title(s) Director

#### **Régie Autonome des Transports Parisiens**

Signature(s)

Name(s) Cyril Conde

Title(s) Director

**Technische Universitaet Dresden**

Signature(s)

Name(s) Matthias Winker

Titles(s) Director

**International Association of Public Transport (UITP)**

Signature(s)

Name(s) Hans Rat

Title(s) Secretary General

**Union des Industries Ferroviaires Europeennes**

Signature(s)

Name(s) Michael Clausecker

Title(s) Director - General

**Universite de Valenciennes et du Hainaut- Cambresis**

Signature(s)

Name(s) Prof. Marie-Pierre Mairesse

Title(s) President of the University of Valenciennes

**Thales Rail Signalling Solutions Inc.**

Signature(s)

Name(s) Bruno Cohades

Title(s) Vice – President and Managing Director

**Kite Solutions S.N.C. Di Dunne Catherine E.C.**

Signature(s)

Name(s) Catherine Dunne

Title(s) Manager

**Dimetronic SA**

Signature(s)

Name(s)\_Jesús Guzmán Martin de los Santos

Title(s) Managing Director

**Rail & Bus Consultants GmbH**

Signature(s)

Name(s)\_Ulrich Lüdtkke

Title(s) Director

**Ansaldo STS France**

Signature(s)

Name(s) Georges Dubot

Title(s) Chief Executive Officer

**Ferrocarril Metropolitana de Barcelona S.A.**

Signature(s)

Name(s) Michael Pellot

Title(s) Director of R&D

**Telsys GmbH**

Signature(s)

Name(s) Sven Scholz

Title(s) Managing Director

**London Underground Limited**

Signature(s)

Name(s) Edward Goddard

Title(s) Chief Engineer

**Metro de Madrid S.A.**

Signature(s)

Name(s) Francisco Javier Gonzalez Fernandez

Title(s) Engineering, Maintenance and R&D Director.

**Université de Technologie de Compiègne**

Signature(s)

Name(s) Ronan Stephan

Title(s) President of the University



**[ATTACHMENT 1: BACKGROUND INCLUDED]**

Access Rights to Background made available to the Parties:

No Background was included from the parties

This represents the status at the time of signature of this Consortium Agreement.

**[ATTACHMENT 2: BACKGROUND EXCLUDED]**

Background excluded from Access Rights:

No Background was excluded from the parties

This represents the status at the time of signature of this Consortium Agreement.

**[ATTACHMENT 3: ACCESSION DOCUMENT]**

ACCESSION  
of a new Party to

[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE EC GRANT AGREEMENT] hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE EC GRANT AGREEMENT] hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

[Date and Place]  
[INSERT NAME OF THE NEW PARTY]  
Signature(s)  
Name(s)  
Title(s)

[Date and Place]  
[INSERT NAME OF THE COORDINATOR]  
Signature(s)  
Name(s)  
Title(s)

**[ATTACHMENT 4: LISTED AFFILIATED ENTITIES]**

**Not listed affiliated entities was provided**

**[ATTACHMENT 5: LIST OF MEMBERS AND CONTACT PERSONS]**

Recipients for notices in accordance with clause 8.4 of this Consortium Agreement.

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**[ATTACHMENT 6: LIST OF THIRD PARTIES]**

List of Third Parties to which transfer of Foreground is possible without prior notice to the other.

No Third Parties were listed.

**[ATTACHMENT 7: AGREEMENT FOR THE TRANSFER OF MATERIAL]**

An Agreement for the transfer of material to be used outside the Project will be made between the Parties concerned (the transferring Party and the receiving Party) taking account of the individual case.



**[ATTACHMENT 8: LIST OF BENEFICIARIES]**

<b>Benef. No.</b>	<b>Beneficiary name</b>	<b>Beneficiary short name</b>	<b>Country</b>	<b>Date enter project</b>	<b>Date exit project</b>
1	TÜV Rheinland InterTraffic GmbH	TRIT	DE		
2	TÜV Rheinland Consulting GmbH	TRC	DE		
3	Société Technique pour l'Energie Atomique	AREVA	FR		
4	Budapest University of Technology and Economics	BME	HU		
5	Bombardier (Signal) GmbH	BTSECS	DE		
6	Institut National de Recherche sur les Transports et leur Sécurité	INRETS	FR		
7	Alstom Transport SA	Alstom	FR		
8	Régie Autonome des Transports Parisiens	RATP	FR		
9	Technische Universität Dresden	TUD	DE		
10	Union Internationale des Transports Public	UITP	BE		
11	Association of the European Railway Industry	UNIFE	BE		
12	Université de Valenciennes et du Hainaut-Cambrésis	UVHC	FR		
13	Thales Rail Signalling Solutions Inc.	Thales RSS	Canada		
14	KITE Solutions s.n.c.	KITE	IT		
15	Dimetronic SA	Dimetronic	ES		
16	Rail&Bus Consultants GmbH	R&B	DE		
17	Ansaldo STS France	Ansaldo	FR		
18	Transports Metropolitans de Barcelona S.A.	TMB	ES		
19	TelSys GmbH	TelSys	DE		
20	London Underground Limited	LU	UK		
21	Metro de Madrid S.A.	MM	ES		
22	Université de Technologie Compiègne	UTC	FR		

**[ATTACHMENT 9: PAYMENT PROVISIONS]**

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## **0 Preamble**

This guide is a supporting document to the organisations/persons involved in the MODSAFE Project in terms of financial and administrative issues.

The document is an integral element (Attachment 9) of the MODSAFE Consortium Agreement and will be amended in due time.

Any provision of the Grant Agreement (GA) and further legally binding rules for FP7 projects prevail over provisions made by the consortium such as this consortium agreement.

This document covers the following issues:

- Accounting rules
- Audits
- Payments

## **1 Basic provisions**

### **1.1 Budget**

The budget breakdown is part of the Grant Agreement (Annex I – Description of Work).

### **1.2 Reporting**

The reporting on technical and financial issues is obligatory and therefore pre-scribed in the Grant Agreement.

For MODSAFE project the following reporting periods have been defined in Art. 4 of the Grant Agreement:

P1 : Month 1-18

P2: Month 19-30

P3: Month 31-48

## 2 Accounting rules

The accounting of costs related to this project has to be done according to the specific and regular procedures of each organisation.

Only net values are eligible costs.

VAT will not be reimbursed. Further costs, which will not be reimbursed, (non eligible costs) are stated in Annex II of the GA.

Eligible costs (direct and indirect costs) of the Project are described in the General Conditions (Annex II, GA) and in the “Guide to Financial Issues relating to FP7 Indirect Actions”.<sup>1</sup>

## 3 Financial reporting to the EC

### 3.1 General provisions

The provisions for reporting pre-scribe an “explanation of personnel costs, subcontracting and any major costs incurred by each beneficiary, such as the purchase of important equipment, travel costs, large consumable items, etc... . This explanation must be provided per beneficiary and per work package.”<sup>2</sup>

The consortium shall submit the reports and other deliverables through the Coordinator to the EC by electronic means.

The consortium has to submit periodic reports and final report on request of the EC.

Periodic and final reports require

- an overview of the progress of work towards the objectives of the project and
- a financial statement, from each beneficiary together with a summary financial report consolidating the claimed Community contribution of all the beneficiaries in an aggregate form, based on the information provided in Form C (Annex VI of GA) by each beneficiary.
- certificates on financial statements, when applicable (see 4.1)

### 3.2 Financial Statement –Form C

The document “Form C” is a cost statement which has to be provided from each beneficiary. The Coordinator collects the forms from all beneficiaries and submits the

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<sup>1</sup> [http://cordis.europa.eu/fp7/find-doc\\_en.html](http://cordis.europa.eu/fp7/find-doc_en.html)

<sup>2</sup> PERIODIC REPORT TEMPLATE – MARCH 2008, [ftp://ftp.cordis.europa.eu/pub/fp7/docs/periodic\\_report\\_en.doc](ftp://ftp.cordis.europa.eu/pub/fp7/docs/periodic_report_en.doc)

whole set to the EC at the latest 60 days after a reporting period. Any delay leads to a stop of payment from EC to the project until it was submitted.

The Form C should state the justification of the resources and their necessity to the EC. Form C set out in Annex VI to the GA (template), has to be provided by each beneficiary.

In order to submit the Form Cs to the European Commission each beneficiary will follow the procedure establish by the European Commission for that purpose.

## 4 Monitoring measures

Two types of monitoring measures can be accommodated from the EC.

### 4.1 Certificate on the financial statements (Form D)

A certificate on the financial statements (Form D, *Annex VII to the GA*) has to be provided according to the provisions of the Grant Agreement Annex II Art. II.4.4.

A Certificate on Form D is mandatory for every claim (interim or final) in the form of reimbursement of costs whenever the amount of the EC contribution is equal or superior to EUR

375,000 when cumulated with all previous payments for which a Form D has not been submitted. Once a Form D is submitted, the threshold of EUR 375,000 applies again for subsequent EC contributions but the count starts from 0.

### 4.2 Further Audits initiated by the EC

Further audits can be initiated by the EC at any time during the project period and up to five years after the end of the project according to the provisions of the Grant Agreement Annex II Section 3.

Further audits by the EC may cover:

- scientific aspects;
- technological aspects;
- ethical aspects;
- financial aspects (relating to costs);
- any other aspects (such as financial accounting and management principles) relating to the proper implementation of the project and the contract concerned.

In addition, in order to protect the European Communities' financial interests against fraud and other irregularities, the EC may carry out on the spot checks and inspections. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EC.

#### 4.3 Beneficiaries' rights and obligations

In order to enable an appropriate assessment of the projects performance and its management beneficiaries are obliged to:

- keep the originals, or duly authenticated copies – including electronic copies – of all documents relating to the Grant Agreement for up to five years from the end of the project or up to the end of an audit if it is notified to the consortium and if this dated is later than five years after the end of the project,
- ensure that the EC's services, and/or any external body authorised by it, have on-the-spot access to all the information needed to carry out those audits,
- ensure that all information and data will be precise, complete and effective and
- ensure that the rights of the EC and the European Court of Auditors to carry out audits are extended to the right to carry out any such audit or control on any third party whose costs are reimbursed in full or in part by the EC contribution, on the same terms and conditions.

#### 4.4 Auditors

Audits may be carried out by:

- the EC (its own departments – including OLAF – or by any of its duly authorised representatives (including external auditors appointed by the EC) and
- the European Court of Auditors (by its own departments or by any of its duly authorised representatives).

The *beneficiaries* shall make available all detailed information and data that may be requested by the EC or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it.

The European Court of Auditors shall have the same rights as the EC, notably right of access, for the purpose of checks and audits, without prejudice to its own rules.

#### 4.5 Result of audits

On the basis of the conclusions of the audit, the EC may issue recovery orders and apply sanctions including liquidated damages.

## 5 Payments

### 5.1 Payments from EC to the Coordinator

The following types of payments are foreseen:

- Pre-financing at the start of the project
- Interim payments following the approval of periodic reports
- Final payment following the approval of final report

#### (1) Pre-financing at the start of the project

There will be one pre-financing payment (advance payment) during the life of the project. Once the Coordinator has received the pre-financing payment it will be distributed to the beneficiaries who have signed and returned Form A (Annex IV to the Grant Agreement) in accordance with clause 5.2 below.

The pre-financing will remain the property of the EC until the final report has been approved.

The EC will retain 5% of the maximum EC contribution which is dedicated to the guarantee fund. The first payment from the EC will be reduced correspondingly.

#### (2) Interim payments following the approval of periodic reports

For projects with more than one reporting period, the EC shall make interim payments of the Community financial contribution corresponding to the amount accepted for each reporting period.

#### (3) Final payment following the approval of final report

The EC shall make a final payment of the Community financial contribution corresponding to the amount accepted for the last reporting period plus any adjustment needed.

For the calculation of the final Community contribution, any interest generated by the pre-financing in the account of the Coordinator as well as any receipt received by the beneficiary has to be taken into account.

The EC will not pay the final rate of the grant in advance. As a consequence each beneficiary has to pre-finance its costs for the final period. Credit costs will not be reimbursed.

### 5.2 Payments from the Coordinator to beneficiaries

Principal conditions precedent to payments from the Coordinator to beneficiaries:



- To receive payments a beneficiary prior has to accede to the GA by signing the Form A (Annex IV “Accession of beneficiaries to the grant agreement” to the GA).
- The sum of payments to a beneficiary is limited to the budget share of the beneficiary for the period concerned and the actually available payment from the EC.
- Each payment from the Coordinator to a beneficiary requires a preceding payment from the EC to the Coordinator for the period concerned. The Coordinator will not disburse payments to the beneficiary without prior receipt of corresponding resources from the EC for the concerned period. All payments by the Coordinator will be made in EURO. The costs for the transfers (bank charges) of a beneficiary’s share shall be payable by it.
- Each beneficiary is responsible for the costs incurred by him and for compliance with the provisions contained in the Grant Agreement. This shall also include any currency translation losses or any repayment demands made by the EC. Furthermore, each beneficiary shall be responsible for complying with the national tax laws applicable to it in respect of payments under the GA.
- All payments by the coordinator shall be deemed to be subject to demands for repayment at the request of the EC or of a third party empowered by it. Amounts overpaid by the coordinator, including any interest calculated by the EC, shall be refunded immediately by the respective beneficiary upon request.

**a. Pre-financing-payments from Coordinator to beneficiaries**

It is envisaged that the Coordinator authorises payments to the beneficiaries every six months on the basis of a “Request for Payment” provided that the EC paid in advance. The procedure combines advance payments for the coming 6 months and a cost reporting for the previous six months.

The half-year accounting will enable a precise monitoring of costs for the beneficiary regarding his own activities as well as for the Coordinator regarding its duties.

Therefore a dedicated procedure ensures

- advanced payments to the beneficiaries,
- full accordance with the provision of the GA and FP7,
- an effective and lean monitoring of cost development in the project,
- a minimum administrative effort for the beneficiaries and

- a maximum of transparency and soundness.
- The only eligible currency for the payment is EURO. Other currencies have to be converted in EURO. Therefore only EURO-amounts are eligible within the RFP. Only net values can be accounted.

## **b) Procedure**

The procedural steps prior to the authorisation of the payment from Coordinator to the beneficiary can be roughly described as follows:

1. TRC will send the excel-file to each beneficiary.
2. The beneficiaries will fill in the file and send it back to TRC.
  - All beneficiaries have to fill in the necessary dates into the input mask
3. TRC will check and consolidate the data within a dedicated accounting system. The consolidation of data of received payments, occurred costs in the past and estimated costs for the future will lead to the calculation of the amount for next payment.
4. TRIT will check the technical work performed by the beneficiary.
5. A locked file (pdf) will be sent by e-mail to the beneficiary.
6. The beneficiary will check the content of the locked file, sign it and send it back to TRC by post.
7. After a final check TRIT will authorise a payment (if there are no reasons for refusing a payment).

## **6 Contribution to the Guarantee Fund (Article 6 & II.21 of GA)**

As mentioned above, the amount of the beneficiaries' contribution to the Guarantee Fund (Article II.21 of GA) is part of the pre-financing but will be immediately subtracted from the pre-financing, before it is paid by the EC to the Coordinator, and transferred directly by the EC to the Guarantee Fund. Therefore, the net amount received by the Coordinator in its bank account will be reduced by the amount to the Guarantee Fund (see Article 6 of the GA).

The EC contribution transferred to the Guarantee Fund will be returned to the beneficiaries via the Coordinator at the end of the project. Nevertheless, a maximum deduction of 1% of the EC contribution may be applied to some beneficiaries according to the provisions in Article II.21 of the GA.

## 7 Refreshments and food on MODSAFE events

To justify the provision of food during MODSAFE events there was a need indicated from EC to exclude that participants from MODSAFE partners receive both - food and daily allowance. To exclude such a double financing all employees of the MODSAFE partners shall sign a declaration of daily allowance. The signatories thereby confirm that they will reduce their daily allowance according to the received food and bases on the rules of their organisations.

## 8 Glossary

GA	Grant Agreement
CA	Consortium Agreement
CO	Coordinator
D.O.W.	Description of Work - Annex I of the Grant Agreement
EC	European Commission
Form C	Financial statement per funding scheme - Annex VI of the GA
Form D	Certificate on the financial statements – Annex VII of the GA
FP7	7 <sup>th</sup> Framework Programme
RFP	Request For Payment
VAT	Value Added Tax